

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
August 28, 2014

v

RAHIM ABDUL ALFETLAWI,

Defendant-Appellant.

No. 313855
Macomb Circuit Court
LC No. 2012-000727-FC

Before: MURPHY, C.J., and WHITBECK and TALBOT, JJ.

PER CURIAM.

Defendant Rahim Abdul Alfetlawi appeals by right his jury trial convictions for first-degree, premeditated murder, MCL 750.316(1)(a), possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and carrying a firearm with unlawful intent, MCL 750.226. He was sentenced to life imprisonment without the possibility of parole for the murder conviction, two years' imprisonment for the felony-firearm conviction, and two to five years' imprisonment for the other firearm-related conviction. We affirm.

Defendant argues that there was insufficient evidence to support his conviction for first-degree, premeditated murder. We review *de novo* the issue regarding whether there was sufficient evidence to sustain a conviction. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In reviewing the sufficiency of the evidence, this Court must view the evidence – whether direct or circumstantial – in a light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012); *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). A jury, and not an appellate court, observes the witnesses and listens to their testimony; therefore, an appellate court must not interfere with the jury's role in assessing the weight of the evidence and the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992). Circumstantial evidence and the reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). “It is for the trier of fact . . . to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded to the inferences.” *Hardiman*, 466 Mich at 428. The prosecution need not negate every reasonable theory of innocence, but must only prove the elements of the crime in the face of whatever contradictory evidence is provided by the defendant. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). We resolve all

conflicts in the evidence in favor of the prosecution. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

To convict a defendant of first-degree, premeditated murder, the prosecution must prove that the defendant caused the death of the victim, that the defendant intended to kill the victim (malice), that the intent to kill was premeditated and deliberate, and that the killing was not justified or excused, if at issue. MCL 750.316(1)(a); *People v Mendoza*, 468 Mich 527, 533-534; 664 NW2d 685 (2003); *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998); M Crim JI 16.1. Premeditation means to think about something beforehand, while deliberation means to measure and evaluate the facets of a choice or problem. *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). “Premeditation and deliberation require sufficient time to allow the defendant to take a second look.” *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992). “Though not exclusive, factors that may be considered to establish premeditation include the following: (1) the previous relationship between the defendant and the victim; (2) the defendant's actions before and after the crime; and (3) the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted.” *Plummer*, 229 Mich App at 300. Premeditation and deliberation can be inferred from the circumstances surrounding a killing, and “[m]inimal circumstantial evidence is sufficient to prove an actor’s state of mind.” *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2002).

The trial testimony revealed a tumultuous relationship between defendant and the victim, his step-daughter. From 2005 to approximately July of 2010, the victim lived with her mother and defendant in Minnesota. Beginning in 2009, the victim’s boyfriend also frequently stayed with the family. During this timeframe, defendant was “obsessive” about the victim’s activities, always wanting to know where she was going and who she was meeting; he often followed her to work. Defendant also eavesdropped on the victim’s private conversations using video and audio surveillance equipment that he had installed in the home and in various vehicles. The victim revealed to her boyfriend that defendant sexually assaulted her on nights when the boyfriend was not around. She begged the boyfriend not to call police because she was afraid of defendant’s response. The boyfriend also witnessed defendant slap the victim on several occasions.

Around July of 2010, the victim and her boyfriend moved to Grand Blanc, Michigan, to live with the victim’s biological father, and they stayed there until December 2010. During this period, the victim and her boyfriend received numerous telephone calls from defendant in which defendant threatened to kill them if they did not return to Minnesota. In December of 2010, the victim and her boyfriend moved to the victim’s grandmother’s house in Warren, Michigan. They continued receiving threatening telephone calls from defendant, and defendant warned the boyfriend that “bad things will happen if you don’t move back” to Minnesota. Then, on March 26, 2011, defendant and the victim’s mother traveled from Minnesota to Michigan to see the victim and other family members. During the visit, defendant urged the victim to return to Minnesota. Several people, including the victim’s mother, grandmother, and boyfriend, heard defendant threaten the victim with violence if she did not return. The victim finally and reluctantly agreed, and she returned with defendant and her mother that night.

Over the ensuing days, defendant refused to let the victim out of his sight. The victim expressed her misery to her mother, and her mother agreed to let her return to Michigan. The

victim's mother took her to the train station without defendant's knowledge. Before she dropped off the victim, the mother told her to buy a new cellular telephone because defendant was monitoring the victim's current telephone through spyware purchased on the internet.

On the train from Minnesota to Michigan, the victim spoke with a fellow passenger and told him about past physical and sexual abuse to which she was subjected by defendant. The victim indicated that she was running away and that she had run away before, but was coerced into returning by threats of violence. She further told the passenger that defendant was monitoring her cellular telephone and that she was afraid he would try to intercept her when she exited the train. The victim told the passenger that she was afraid of defendant.

The victim arrived in Michigan on April 4, 2011, and stayed with a friend. On April 29, in a telephone conversation with her mother, the victim disclosed that defendant had sexually assaulted her and further indicated that she hesitated to tell her mother because defendant threatened to kill her. The victim's mother was alone in her vehicle when this conversation took place. Later that day, the victim's mother recalled that defendant left the apartment for about 45 minutes. When he returned, he seemed "agitated" and "in a hurry" to travel to Michigan. Within hours, defendant left for Michigan without the victim's mother. The next day, April 30, defendant met with the victim and drove her to her grandmother's house in Warren. Defendant was armed with a nine millimeter handgun. It is undisputed that while at the house, defendant shot the victim in the side of the head, killing her. He then went to a police station, where he admitted killing the victim and asked to be arrested while simultaneously indicating that he was "crazy." In subsequent interviews, he claimed the shooting was an accident, but he gave conflicting versions of how the shooting occurred, none of which were consistent with the physical evidence.

Viewed in the light most favorable to the prosecution, there was ample evidence from which a reasonable jury could find, beyond a reasonable doubt, that defendant intentionally killed the victim and that the killing was premeditated and deliberate. Specifically, the relationship was tumultuous and punctuated by defendant's threats to kill the victim, and, leading directly up to the murder, defendant drove the lengthy journey from Minnesota to Michigan with a loaded gun very shortly after the victim disclosed sexual abuse. In the context of those circumstances, a juror could reasonably infer that defendant, with plenty of time available during the commute, thought about the murder beforehand and measured and evaluated the facets of killing the victim. When defendant arrived and was alone with the victim alone, he shot her in the head, and he was not standing near her such that his claim of an accidental shooting had any merit. Reversal is unwarranted.

Defendant next argues that he was denied a fair trial by the erroneous admission of several "categories" of evidence. Citing approximately 73 different portions of the record, defendant groups these categories into (1) evidence of defendant's past physical and sexual assaults upon the victim and her mother, (2) evidence of defendant's repeated threats against the victim and others, (3) evidence of defendant's surveillance and "stalking" of the victim, (4) evidence regarding the fear and hatred the victim and others had of defendant, and (5) evidence of defendant's "obsession" with the victim. Defendant argues that this evidence was comprised of inadmissible hearsay, inadmissible prior bad acts, and inadmissible testimony as analyzed under MRE 403, which calls for the exclusion of evidence when its probative value is

substantially outweighed by the danger of unfair prejudice. Defendant also argues that he was denied his constitutional right to confrontation by admission of the victim's statements. We disagree.

We first address defendant's hearsay arguments. Hearsay is "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). "Hearsay is generally prohibited and may only be admitted at trial if provided for in an exception to the hearsay rule." *People v Gursky*, 486 Mich 596, 606; 786 NW2d 579 (2010); see also MRE 802.

As a threshold matter, we note that among the many record citations provided by defendant are defendant's own statements, relayed by various witnesses at trial, in which defendant threatened them with violence if they did not agree to help him locate and monitor the victim. To the extent that defendant challenges the admissibility of his own statements on hearsay grounds, it is clear that they were admissible nonhearsay under MRE 801(d)(2)(A) (admission of party-opponent offered against the party).

Regarding various statements made by the victim to others, including those in which she: disclosed sexual abuse, violence, and threats of violence; expressed her fear for and hatred of defendant; and explained that defendant was monitoring her cellular telephone, the trial court allowed the victim's statements to be admitted under MRE 804(b)(6). MRE 804(b)(6), known as the "forfeiture-by-wrongdoing rule," *People v Roscoe*, 303 Mich App 633, 640; 846 NW2d 402 (2014), provides that it allows for the admission of an unavailable declarant's hearsay statements when the defendant "engaged in or encouraged wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness." As its plain language indicates, MRE 804(b)(6) "incorporate[s] a specific-intent requirement." *Id.* "To admit evidence under MRE 804(b)(6), the prosecution must show by a preponderance of the evidence that: (1) the defendant engaged in or encouraged wrongdoing; (2) the wrongdoing was intended to procure the declarant's unavailability; and (3) the wrongdoing did procure the unavailability." *People v Burns*, 494 Mich 104, 115; 832 NW2d 738 (2013). In this case, the trial court found, and we agree, that a preponderance of the evidence supported a conclusion that defendant engaged in wrongdoing that procured the unavailability of the victim for trial. However, the trial court expressly declined to make a finding as to whether defendant intended to procure the victim's unavailability, holding instead that no such finding was required. That determination was in error. Nonetheless, we agree with the prosecution's argument on appeal that a preponderance of the evidence supported such a finding; therefore, we conclude that the trial court's error was harmless. See MCL 769.26. Notably, testimony revealed that defendant kept surveillance equipment, including audio recording devices, in the family home and in various vehicles, and the victim's mother specifically testified that one such device was in her vehicle. The day before the victim was killed, she had a telephone conversation with her mother, who was by herself in her vehicle, in which she disclosed to her mother that defendant had sexually assaulted her. Later that same day, defendant left the apartment and was gone for 45 minutes. When he returned, he was agitated and anxious to leave for Michigan. He then left for Michigan with a loaded weapon in his vehicle. By the next day, the victim was dead. "While the timing of the wrongdoing is by itself not determinative, it can inform the inquiry: a defendant's wrongdoing *after* the underlying criminal activity has been reported or discovered is inherently more suspect, and can give rise to a strong inference of intent to cause a declarant's unavailability." *Burns*, 494

Mich at 116. We therefore conclude that a preponderance of the evidence supports a finding that defendant shot and killed the victim with the specific intent to cause her unavailability to later testify about the alleged sexual abuse once he learned, through the use of his surveillance equipment, that she had disclosed the abuse to her mother. The victim's hearsay statements were therefore admissible under MRE 804(b)(6).¹ We also note that some of the victim's statements qualified under the hearsay exception for a declarant's then existing state of mind or emotion. MRE 803(3).

Further, admission of the victim's hearsay statements did not violate defendant's constitutional right to confrontation. The Confrontation Clause is only implicated by admission of "testimonial" statements, which do not include casual remarks not intended to aid a later criminal prosecution. *Bullcoming v New Mexico*, ___ US ___; 131 S Ct 2705, 2713-2714 n 6; 180 L Ed 2d 610 (2011); *People v Crawford*, 541 US 36, 51; 124 S Ct 1354; 158 L Ed 2d 177 (2004). Here, none of the victim's statements were testimonial in nature.

We next address defendant's MRE 404(b) argument. Notably, defendant raised this objection at trial with respect to the victim's statements, but not with respect to any of the other evidence now challenged on appeal. Thus, while we review admission of the victim's statements for an abuse of discretion, *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999),² we review admission of the remainder of the evidence for plain error affecting defendant's substantial rights, *Carines*, 460 Mich at 763-764. We find no error, plain or otherwise, with respect to the challenged evidence.

"Generally, Michigan's Rules of Evidence proscribe the use of character evidence to prove action in conformity therewith." *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998), citing MRE 404. However, MRE 404(b)(1) provides that evidence of an individual's prior bad acts may "be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material[.]" "Evidence relevant to a noncharacter purpose is *admissible* under MRE 404(b) *even if* it also reflects on a defendant's character. Evidence is *inadmissible* under this rule *only* if it is relevant *solely* to the defendant's character or criminal propensity." *People v Mardlin*, 487 Mich 609, 615-616; 790 NW2d 607 (2010). In *People v*

¹ In *Burns*, 494 Mich at 116 n 38, our Supreme Court noted the case of *People v Banos*, 178 Cal App 4th 483, 502; 100 Cal Rptr 3d 476 (2009), which held, as characterized by the *Burns* Court, that the intent requirement of the forfeiture-by-wrongdoing rule "was satisfied by the testimonial statements of the defendant's ex-girlfriend, for whose murder he was being tried, because the evidence showed that the defendant had killed her both out of jealousy *and* to prevent her from testifying in pending cases and from cooperating with authorities." Here, while there were no pending sexual assault charges against defendant, the evidence strongly suggested that defendant killed the victim to prevent such charges from ever being filed or to prevent the victim from ever testifying against him.

² We do note that underlying questions of law, e.g., whether a rule of evidence precludes the admission of evidence, are reviewed de novo. *Lukity*, 460 Mich at 488.

VanderVliet, 444 Mich 52; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994), our Supreme Court set forth the test for trial courts to use in determining the admissibility of other acts evidence. First, the evidence must be offered for a proper purpose under MRE 404(b); second, the evidence must be relevant under MRE 402; and third, the probative value of the evidence cannot be substantially outweighed by the danger of unfair prejudice, as required in MRE 403. *Id.* at 74-75. Finally, upon the admission of other acts evidence, the trial court may, upon request, provide a limiting instruction to the jury under MRE 105. *Id.* at 75.

At the outset, we again note that to the extent defendant challenges his own statements threatening the victim and others, there is no MRE 404(b) problem. A prior statement by a defendant “does not constitute a prior bad act coming under MRE 404(b) because it is just that, a prior statement and not a prior bad act.” *People v Rushlow*, 179 Mich App 172, 176; 445 NW2d 222 (1989), citing *People v Goddard*, 429 Mich 505, 518; 418 NW2d 881 (1988). Instead, the prior statements are properly admitted if they are relevant and if their probative value is not substantially outweighed by the danger of unfair prejudice. *Goddard*, 429 Mich at 515. Here, defendant’s prior statements, in which he threatened to kill the victim and her boyfriend if they did not return to Minnesota, and in which he threatened to harm the victim’s mother and friends if they did not cooperate in his attempts to locate and monitor the victim (and that the police could not stop him), were clearly relevant to defendant’s state of mind. That is, that he was confrontational, was prepared to assault or kill anyone who interfered with his relationship with the victim and his attempts to control her, and that he was not afraid of the consequences. The threats made it “more probable” that defendant intentionally killed the victim with premeditation and deliberation, and “less probable” that the shooting was accidental. MRE 401. Additionally, we find that the clear probative value of these threatening statements was not substantially outweighed by the danger of unfair prejudice. MRE 403. There was no plain error.

We further note that much of the testimony cited by defendant in the various “categories” of evidence did not deal with defendant’s prior bad acts at all, but rather dealt with the overall history and nature of the case. Thus, to the extent defendant challenges such evidence, there is clearly no MRE 404(b) concern.

Finally, with respect to that evidence which clearly did involve defendant’s prior acts, such as his physical and sexual abuse of the victim and her mother and his acts of “stalking” and monitoring the victim, we conclude that there was no error, plain or otherwise, in its admission. First, MRE 404(b) is not even the governing rule for purposes of the proper analysis. MCL 768.27b provides, in part:

(1) [I]n a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other acts of domestic violence is admissible for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403.

...

(5) As used in this section:

(a) “Domestic violence” or “offense involving domestic violence” means an occurrence of 1 or more of the following acts by a person that is not an act of self-defense:

(i) Causing or attempting to cause physical or mental harm to a family or household member.

(ii) Placing a family or household member in fear of physical or mental harm.

(iii) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

(iv) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(b) “Family or household member” means any of the following:

(i) A spouse or former spouse.

(ii) An individual with whom the person resides or has resided.

Defendant was accused of an offense involving domestic violence against a family or household member, given that murder certainly constitutes an act causing physical harm and that the victim was an individual with whom defendant resided or had resided. Furthermore, the physical and sexual assaults and the stalking activities, i.e., the prior bad acts, constituted other acts of domestic violence against a family or household member, considering that the victim and her mother resided or had resided with defendant and that the acts caused or attempted to cause physical or mental harm, placed the victim and her mother in fear of physical or mental harm, were intimidating, threatening, and terrorizing, and caused the victim to engage in involuntary sexual activity by force or threat. “MCL 768.27b permits evidence of prior domestic violence in order to show a defendant's character or propensity to commit” domestic violence. *People v Railer*, 288 Mich App 213, 219-220; 792 NW2d 776 (2010). Here, the evidence at issue was relevant to show defendant’s character or propensity to engage in domestic violence against the victim, bearing on whether he intentionally killed her.

In *People v Cameron*, 291 Mich App 599, 609-610; 806 NW2d 371 (2011), this Court explained the parameters of MCL 768.27b:

The language of MCL 768.27b clearly indicates that trial courts have discretion to admit relevant evidence of other domestic assaults to prove any issue, even the character of the accused, if the evidence meets the standard of MRE 403. In analyzing a sister statute, this Court has previously acknowledged that the Michigan Legislature intended to allow juries the opportunity to weigh a defendant's behavioral history and view the case's facts in the larger context that

the defendant's background affords. MCL 768.27a deals primarily with prior-bad-acts evidence involving crimes against minors. However, because of the similarities in the language of MCL 768.27a and 768.27b, we believe that the Michigan Legislature intended the same policy to apply to domestic violence situations under MCL 768.27b. Thus, prior-bad-acts evidence of domestic violence can be admitted at trial because *a full and complete picture of a defendant's history tends to shed light on the likelihood that a given crime was committed*. [Emphasis added; citations, quotation marks, ellipsis, and alteration bracket omitted.]

Evidence of defendant's prior acts of physical and sexual abuse, and his pattern of stalking or surveillance, provided the jury with context regarding the relationship between defendant and the victim and provided an explanation for why the victim wished to get away from him and why she was scared of him. Moreover, the evidence was inextricably linked to the killing itself, especially where the prosecution's theory of the case was that defendant killed the victim after he learned, through the use of his surveillance equipment, that the victim had disclosed his prior acts of sexual abuse to her mother. The defendant's prior acts were admissible to give the jury a full and complete picture of defendant's history and tended to shed light on the likelihood that defendant killed the victim as theorized by the prosecution. As with the evidence regarding defendant's threats, evidence that he previously physically and sexually assaulted the victim and "stalked" the victim was highly relevant in that it made it "more probable" that defendant intentionally killed the victim with premeditation and deliberation, and "less likely" that the shooting was an accident or otherwise excusable, or that the shooting constituted a lesser offense.

Finally, with respect to the MRE 403 analysis required by MCL 768.27b, the probative value of the challenged evidence was not substantially outweighed by its prejudicial effect. Given that the evidence was inextricably linked to the circumstances of the killing, there was minimal danger that it was given "undue or preemptive weight by the jury." *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998). As stated by the *Railer* panel, "[w]hile th[e] evidence was certainly damaging and prejudicial – as is most evidence presented against a criminal defendant – it was by no means inflammatory, nor did it interfere with the jury's ability to logically weigh the evidence." *Railer*, 288 Mich App at 220-221. The evidence was not *unfairly* prejudicial. There was no error, plain or otherwise, in the admission of the challenged evidence.

In addition to arguing that the challenged evidence was inadmissible under MRE 404(b), defendant asserts on appeal that the prosecution failed to comply with the notice requirement of MRE 404(b)(2). We note that MCL 768.27b also contains a notice requirement. MCL 768.27b(2). Defendant has waived this argument. During an evidentiary hearing concerning the victim's hearsay statements, defendant raised his MRE 404(b) objection, and the trial court specifically asked whether defendant was objecting to the timeliness of the evidence. Defendant's counsel expressly declared that he was raising no such objection, and further noted that he was aware of the evidence as of the preliminary examination. "One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error." *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) (citation omitted).

Finally, defendant argues that his privilege against self-incrimination was violated when the prosecution elicited testimony from a dispatcher at trial regarding what defendant told her at the police station immediately after the shooting, and when the prosecution later referenced this testimony during his closing argument. The dispatcher testified that when defendant entered the police station, he told her that he had just killed his step-daughter. The dispatcher further testified that defendant did *not* say that the shooting was an accident, nor did he make a request for paramedics.

We review this unpreserved constitutional claim for plain error affecting defendant's substantial rights. *People v Borgne*, 483 Mich 178, 184; 768 NW2d 290 (2009). The Fifth Amendment to the United States Constitution, applicable to the states via the Due Process Clause of the Fourteenth Amendment, guarantees that no person shall be compelled in any criminal case to be a witness against himself. *People v Shafier*, 483 Mich 205, 212; 768 NW2d 305 (2009). In order to protect that right, "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards[.]" *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 694 (1966). Likewise, if a person chooses to remain silent after being arrested and given *Miranda* warnings, that silence may not be used as evidence against that person. *Shafier*, 483 Mich at 212, citing *Wainwright v Greenfield*, 474 US 284, 290-291; 106 S Ct 634; 88 L Ed 2d 623 (1986).

Neither the challenged testimony, nor the prosecution's later reference thereto, spoke to defendant's decision to remain silent as much as it did his failure to include pertinent information during the making of voluntary, affirmative statements. In any event, to the extent the testimony and later reference during closing argument could be construed as commenting on defendant's silence, this Court has made clear that use of a defendant's pre-arrest, pre-*Miranda* silence as substantive evidence of his guilt generally does not violate the defendant's privilege against self-incrimination. *People v Solmonson*, 261 Mich App 657, 665; 683 NW2d 761 (2004); *Schollaert*, 194 Mich App at 164-165. Here, there is "no reason to conclude that his silence was attributable to the invocation of . . . defendant's Fifth Amendment privilege." *Solmonson*, 261 Mich App at 665. In support of his argument, defendant cites *Combs v Coyle*, 205 F3d 269, 283 (CA 6, 2000), but to the extent that the case calls for a different resolution, this Court is not bound to follow decisions of federal circuit courts on questions of federal law. *Abela v Gen Motors Corp*, 469 Mich 603, 606-607; 677 NW2d 325 (2004). Instead, under MCR 7.215(J)(1), we must follow the rule of law set forth in *Schollaert* and *Solmonson*. Accordingly, we reject defendant's constitutional claim because he was not under arrest and had not been read his *Miranda* rights when he made the voluntary statements to the dispatcher, nor could his silence otherwise be attributable to the invocation of his Fifth Amendment rights. There was no plain error.

Affirmed.

/s/ William B. Murphy
/s/ William C. Whitbeck
/s/ Michael J. Talbot